

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
3 UNITED STATES OF AMERICA, ) Case 1:14-cr-00230  
4 )  
Plaintiff, )  
5 )  
v. ) Alexandria, Virginia  
6 ) October 25, 2016  
MUNA OSMAN JAMA, ) 9:12 a.m.  
and )  
7 HINDA OSMAN DHIRANE, )  
8 )  
Defendants. ) Day 7  
9 ) Pages 1013 - 1058

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10 TRANSCRIPT OF TRIAL  
11 BEFORE THE HONORABLE ANTHONY J. TRENGA  
12 UNITED STATES DISTRICT COURT JUDGE  
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25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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THE DEFENDANT, MUNA OSMAN JAMA, IN PERSON

THE DEFENDANT, HINDA OSMAN DHIRANE, IN PERSON

MARYAM ABDI, SOMALI INTERPRETER

1 THE CLERK: Criminal Case 1:14-cr-230, *United*  
2 *States of America v. Muna Osman Jama and Hinda Osman*  
3 *Dhirane*.

4 Will counsel please identify themselves for  
5 the record.

6 MR. GILLIS: Good morning, Your Honor. Jim  
7 Gillis for the United States with Danya Atiyeh, our  
8 newest addition as an Assistant U.S. Attorney in the  
9 Eastern District of Virginia.

10 THE COURT: Welcome.

11 MR. GILLIS: With me are Agents C.J. Goodman,  
12 Kate Holden, and Wayne Sharp.

13 THE COURT: All right.

14 MR. KAMENS: Good morning, Your Honor.  
15 Jeremy Kamens and Whitney Minter from the Office of the  
16 Federal Public Defender, also Joshua Siegel from the  
17 firm of Cooley, LLP, representing Ms. Jama.

18 MR. YAMAMOTO: Good morning, Your Honor.  
19 Alan Yamamoto and Paula Deutsch for Ms. Dhirane.

20 THE COURT: All right. We also have our  
21 interpreter.

22 Would the interpreter identify herself and be  
23 sworn, please.

24 THE INTERPRETER: Maryam Abdi.

25 (The interpreter affirms.)

1 THE COURT: The Court has reached a verdict  
2 and also on some related outstanding issues.

3 Before the Court publishes its verdict, does  
4 either the government or the defendants wish to raise  
5 anything?

6 Mr. Kamens.

7 MR. KAMENS: Your Honor, we'd ask the Court  
8 if the Court intends to make specific findings of fact  
9 in accordance with Rule 23(c).

10 THE COURT: All right.

11 MR. KAMENS: Does the Court intend to do  
12 that?

13 THE COURT: Yes.

14 MR. KAMENS: Thank you, Your Honor.

15 THE COURT: Anything further?

16 MR. GILLIS: Not from the government, Your  
17 Honor.

18 THE COURT: All right. The Court has heard  
19 the evidence and is prepared to render a verdict.

20 On June 26, 2014, a grand jury returned a  
21 21-count superseding indictment against these two  
22 defendants together with three other codefendants who  
23 have not been arrested and appear to be located out of  
24 the United States.

25 In Count 1, the defendants are charged with

1 conspiracy to provide material support to a foreign  
2 terrorist organization, in violation of Title 18,  
3 United States Code, Sections 2339B, and in Counts 2  
4 through 21, they're charged with providing material  
5 support to a foreign terrorist organization, in  
6 violation of Title 18, United States Code,  
7 Section 2339B and 2.

8           The defendants waived trial by jury, and the  
9 Court held a bench trial beginning on July 11, 2016.  
10 On July 14, after the government rested its case in  
11 chief, the defendants moved for a judgment of acquittal  
12 pursuant to Federal Rule of Criminal Procedure 29 on  
13 which the Court reserved decision. Thereafter the  
14 parties continued the presentation of evidence with all  
15 the parties resting on July 18, following which the  
16 defendants renewed their Rule 29 motion. The Court  
17 then ordered the filing of supplemental briefing and  
18 heard closing arguments on October 12, 2016.

19           Let me first rule on the defendants'  
20 outstanding evidentiary objections to statements made  
21 by persons other than Defendants Jama and Dhirane  
22 identified as such. Based on all the evidence, the  
23 Court finds that there is a sufficient foundation to  
24 bring the challenged evidence within Federal Rule of  
25 Evidence 801(d)(2)(A) or (E) or to establish that this

1 evidence was qualified as verbal facts probative of  
2 knowledge, intent, motive, plan, preparation, or  
3 absence of mistake. Those objections are, therefore,  
4 overruled.

5           With respect to the specific charges, Count 1  
6 of the superseding indictment alleges that, quote, From  
7 at least in or about February 2011 and continuing  
8 through the date of the superseding indictment, these  
9 two defendants, together with Fardowsa Jama Mohamed,  
10 Fahria Hassan, and Barira Hassan Abdullahi, conspired  
11 with each other and with others knowingly to provide  
12 material support and resources to a foreign terrorist  
13 organization, that is al-Shabaab, in violation of  
14 Title 18, United States Code, Section 2339B.

15           The superseding indictment further alleges  
16 that in furtherance of the conspiracy, these defendants  
17 and their coconspirators engaged in a series of 26  
18 transfers of funds beginning on February 8, 2011, with  
19 the transfer from Defendant Jama to Fardowsa Mohamed  
20 and ending on January 23, 2013, with a transfer from  
21 Defendant Dhirane to Daahir Abdi.

22           With respect to Counts 2 through 21, the  
23 superseding indictment alleges that on the specific  
24 dates alleged in each count, a defendant or  
25 coconspirator transmitted a certain amount of money as

1 alleged in each count to a specific individual and,  
2 through that transaction, provided material support to  
3 al-Shabaab or attempted to do so, in violation of  
4 Title 18, United States Code, Section 2339B.

5           These alleged transfers begin in Count 2 on  
6 February 8, 2011, with transfers of money from  
7 Defendant Jama to Mohamed and end in Count 21 with a  
8 transfer on August 8, 2012, from Jama to Osman Jama,  
9 her father.

10           Fourteen of the twenty-one counts of material  
11 support involve transfers from Defendant Jama to  
12 Mohamed; four from Ali Bakri Sheikh, Jama's husband, to  
13 Mohamed; and two transfers from Defendant Jama to Osman  
14 Jama, her father.

15           In order to convict the defendants of  
16 conspiracy to provide material support to a foreign  
17 terrorist organization as alleged in Count 1, the  
18 government must prove beyond a reasonable doubt the  
19 following elements:

20           First, that the defendants conspired to  
21 provide material support or resources to a foreign  
22 terrorist organization;

23           Secondly, that the foreign terrorist  
24 organization was a designated foreign terrorist  
25 organization and was engaged in terrorist activities;

1           The defendant knowingly and intentionally  
2 provided material support or resources; and

3           The defendant had knowledge that the  
4 organization is a designated terrorist organization,  
5 has engaged or engages in terrorist activity, or has  
6 engaged or engages in terrorism.

7           In order to convict each defendant of the  
8 substantive charge of providing material support or  
9 resources to a foreign terrorist organization, the  
10 government must prove beyond a reasonable doubt the  
11 following elements:

12           First, the defendants provided material  
13 support or resources to a foreign terrorist  
14 organization;

15           The foreign terrorist organization was  
16 designated a foreign terrorist organization and was  
17 engaged in terrorist activities;

18           The defendant knowingly and intentionally  
19 provided material support or resources; and

20           The defendant had knowledge that the  
21 organization is a designated terrorist organization and  
22 has engaged or engages in terrorist activity or has  
23 engaged or engages in terrorism.

24           The Court has jurisdiction as to each count  
25 with respect to each defendant if she is either a



1 national of the United States or an alien lawfully  
2 admitted for permanent residence in the United States  
3 or the offense occurs in whole or in part within the  
4 United States or the offense occurs in or affects  
5 interstate or foreign commerce.

6           This case involves inherently difficult  
7 issues of proof, both because of the secretive and  
8 amorphous nature of a terrorist organization and the  
9 limited transparency as to the specific roles and  
10 associations of particular persons, and also because of  
11 the limited practical ability to trace the  
12 extraterritorial movement of specific funds for  
13 specific purposes.

14           Here there is substantial direct evidence,  
15 principally in the form of recorded chat room  
16 statements by these defendants and others, but the  
17 probative value of that evidence is limited and has to  
18 be considered with other circumstantial evidence and  
19 the reasonable inferences that can be drawn from that  
20 evidence, as well as the expert testimony that's been  
21 presented concerning the nature of al-Shabaab's  
22 operations, its known leadership, and those who are  
23 associated with its operations, and the timing of the  
24 alleged transfers relative to actual events involving  
25 al-Shabaab.

1           Based on all the evidence and the reasonable  
2 inferences that can be drawn from that evidence, the  
3 Court finds that the following facts have been  
4 established:

5           Al-Shabaab is designated as a foreign  
6 terrorist organization by the United States Department  
7 of State under Section 219 of the Immigration and  
8 Nationality Act and is also an organization that has  
9 engaged in terrorist activities and is, therefore, a  
10 foreign terrorist organization for the purposes of  
11 Section 2339B(a)(1).

12           Each of these defendants is a United States  
13 citizen and resident of the United States who was born  
14 in Somalia.

15           At all material times, both were ardent,  
16 committed, and active supporters of al-Shabaab.

17           Both knew that al-Shabaab was a designated  
18 foreign terrorist organization and that it engaged and  
19 currently does engage in terrorist activities and that  
20 it was unlawful to provide certain kinds of support to  
21 that organization.

22           Beginning no later than April 2011 in the  
23 case of Defendant Jama and April 2012 in the case of  
24 Dhirane, these defendants participated in a chat room  
25 known as ISDAC or Dactu al-Tawhid. That chat room was

1 composed of members of the Somali community in the  
2 United States and around the world, commonly referred  
3 to as the Somali diaspora.

4           These participants discussed current events  
5 concerning Somalia and also the activities of  
6 al-Shabaab as they appeared in the worldwide press.  
7 Also on various occasions, al-Shabaab leaders and  
8 representatives would speak to the group and solicit  
9 various forms of support, including financial support.

10           Within a smaller private chat room hosted by  
11 Paltalk, a subgroup of participants, known as the group  
12 of 15, held separate and more confidential discussions  
13 approximately once or twice per month.

14           Only those participants from the larger chat  
15 room who were thought to be or could be persuaded to be  
16 committed supporters of al-Shabaab were invited into  
17 the group of 15.

18           Both of these defendants were members of the  
19 group of 15 which had committed to providing financial  
20 contributions on a monthly basis for the benefit of  
21 al-Shabaab.

22           This money was delivered to persons either on  
23 what was referred to as the Nairobi side, referring to  
24 an area in and around Nairobi, Kenya, or the Hargeysa  
25 side of al-Shabaab's operations, referring to an area

1 in and around Hargeysa, Somalia.

2 The chat room itself was sponsored,  
3 supported, and financed through persons closely linked  
4 to al-Shabaab and its fundraising efforts.

5 Both defendants played prominent, if not  
6 leadership roles within the group of 15.

7 One or both of these defendants were involved  
8 in arranging for representatives or persons associated  
9 with al-Shabaab to speak to both the chat room and the  
10 group of 15 during which these al-Shabaab-associated  
11 persons solicited support, including financial support.

12 More specifically, Defendant Jama supervised  
13 the monthly payments by the group of 15, on occasion  
14 personally soliciting contributions.

15 She also monitored whether the individual  
16 members had satisfied their monthly commitments and  
17 whether those sums had been successfully transmitted to  
18 al-Shabaab contacts on both the Nairobi side and  
19 Hargeysa side.

20 She served in the nature of an enforcer by  
21 following up with those members of the group of 15 who  
22 had not paid their monthly commitments on time.

23 Defendant Jama also instructed Defendant  
24 Dhirane on how to perform these roles, and Defendant  
25 Dhirane came to play a similar role.

1           As part of their activities within the group  
2 of 15, the defendants actively and closely coordinated  
3 with others, including Codefendant Fardowsa Jama  
4 Mohamed located in Nairobi, Kenya, and Codefendant  
5 Barira Hassan Abdullahi located in Hargeysa, Somalia.

6           These individuals were actively involved in  
7 arranging for and facilitating support to al-Shabaab.  
8 More specifically, Mohamed operated two safe houses in  
9 Nairobi, Kenya, for al-Shabaab. One of these was  
10 focused, at least in part, on providing medical care  
11 and treatment to injured al-Shabaab soldiers, and the  
12 other was used as a staging ground in various respects  
13 for al-Shabaab military operations.

14           Barira Hassan Abdullahi was involved in  
15 receiving money for al-Shabaab in Somalia or Somaliland  
16 for such purposes as providing transportation, trucks,  
17 and other supportive services to al-Shabaab. This  
18 included what codefendants referred to as living  
19 expenses in the coded language that they employed to  
20 conceal the true nature of their discussions.

21           Defendants Jama and Dhirane were also  
22 involved in generating funds for the benefit of  
23 al-Shabaab through the transmission of those funds to  
24 these individuals with Defendant Jama principally  
25 focused on the delivery of funds to Mohamed and others

1 on the Nairobi side and Defendant Dhirane principally  
2 on the delivery of funds to Abdullahi on the Hargeysa  
3 side often through various intermediaries in order to  
4 conceal the sources and purposes of those funds.

5           As part of the fundraising activities, both  
6 defendants had access to those who held leadership  
7 positions within al-Shabaab and, through those  
8 contacts, had access to nonpublic information  
9 pertaining to al-Shabaab's financial needs, as well as  
10 certain other activities that it was involved with,  
11 including military activities. To a certain extent,  
12 these defendants actually coordinated the fundraising  
13 activities in light of the specific needs of  
14 al-Shabaab.

15           The Court first finds and concludes that it  
16 has jurisdiction over these defendants with respect to  
17 each of the counts in the indictment.

18           With respect to Count 1, the evidence clearly  
19 establishes that each of these defendants entered into  
20 an agreement between themselves and others to provide  
21 funds intended for the support of al-Shabaab.

22           For the substantive counts, 2 through 21,  
23 that certainly these alleged transfers to be discussed  
24 took place knowingly and intentionally for the purpose  
25 of providing that support.

1           The central factual and legal issue is  
2 whether the substance of that agreement and the actual  
3 transfers had as its objective providing unlawful  
4 material support and resources to a foreign terrorist  
5 organization and, in fact, were delivered to a foreign  
6 terrorist organization or whether, as the defendants  
7 contend, the substance of their agreement was simply to  
8 provide funds to persons who were supportive but  
9 independent and not part of al-Shabaab, who in turn  
10 provided exempted assistance to al-Shabaab.

11           The required analysis is somewhat different  
12 for the conspiracy count than for the substantive  
13 counts. For the conspiracy count, the central issue is  
14 whether the defendants' agreement constituted an  
15 agreement to engage in an unlawful act, specifically to  
16 provide to al-Shabaab nonexempted material support  
17 either directly to persons they thought were part of  
18 al-Shabaab or through independent conduits regardless  
19 of whether they were, in fact, successful in doing so.  
20 In the substantive counts, the central issue is whether  
21 the specifically alleged transfers did, in fact,  
22 constitute nonexempted material support to al-Shabaab.

23           The defendants contend that their fundraising  
24 activities and their transmission of the alleged funds  
25 were done in the context of relationships they believed

1 to be entirely independent relationships as between  
2 al-Shabaab and the recipients of Defendants Jama's and  
3 Dhirane's financial transfers and that these  
4 independent recipients provided services or assistance  
5 that they believed were not lawful to provide.

6           The alleged basis for this claimed exemption  
7 is the notion that what was provided was medicine as  
8 defendants claim that term is to be defined, both as a  
9 matter of statutory construction and also consistent  
10 with customary international law in the United States  
11 treaty obligations.

12           These positions require the Court, first, to  
13 determine whether the alleged recipients of those  
14 funds, such as Mohamed and others on the Nairobi side  
15 and Abdullahi on the Hargeysa side, are considered part  
16 of al-Shabaab for the purposes of the material support  
17 statute.

18           If the Court decides that the delivery of  
19 these funds to these individuals does constitute  
20 delivery to al-Shabaab, then the Court must next  
21 determine for the conspiracy count whether these  
22 defendants thought and intended in delivering these  
23 funds to these individuals that they were delivering  
24 funds to al-Shabaab as opposed to some person  
25 independent of al-Shabaab who was merely supportive of



1 al-Shabaab.

2           If the Court decides that the delivery of  
3 these funds to these individuals does not constitute  
4 delivery to al-Shabaab upon the receipt by these  
5 individuals, the Court must then decide whether the  
6 defendants understood and intended that these funds  
7 would be passed on to al-Shabaab in a form that  
8 constituted nonexempt material support, and for the  
9 substantive counts, that any such provision of support  
10 that was delivered or attempted to be delivered to  
11 al-Shabaab was, in fact, exempt.

12           The Court must begin in that analysis by  
13 articulating an operative legal standard by which to  
14 factually determine whether someone should be deemed,  
15 in fact, part of a foreign terrorist organization for  
16 the purpose of determining whether a foreign terrorist  
17 organization has received prohibited material aid.  
18 There is surprisingly little case law that has dealt  
19 with this issue. There's no definitive Supreme Court  
20 case or Fourth Circuit case concerning what constitutes  
21 delivery to a foreign terrorist organization under  
22 Section 2339B.

23           In *United States v. Ali*, the Eighth Circuit  
24 considered facts very similar to those in this case  
25 involving fundraising through chat rooms, but the court

1 did not consider specifically whether the persons to  
2 whom defendants delivered their funds constituted  
3 delivery to al-Shabaab as that evidence at trial was  
4 apparently not challenged as insufficient on appeal.  
5 The Eighth Circuit, therefore, had no occasion to  
6 articulate a specific legal test.

7           In *Holder v. Humanitarian Law Project*,  
8 561 U.S. 1, 2010, an opinion by the Supreme Court, the  
9 Court considered various constitutional challenges to  
10 certain aspects of Section 2339B principally under the  
11 First Amendment, as did the Fourth Circuit in  
12 *U.S. v. Hassan*, 742 F.3d 104, which is a Fourth Circuit  
13 2014 opinion with respect to related sections. But,  
14 again, neither court specifically considered what  
15 involvement or association a person must have with a  
16 foreign terrorist organization to be deemed part of  
17 that organization for the purposes of Section 2339B.

18           The defendants argue for a test that requires  
19 a showing that a particular individual essentially  
20 operates under what they have called the command and  
21 control of recognized al-Shabaab leadership before that  
22 individual may be deemed a part of al-Shabaab for the  
23 purposes of the material support statute. In support  
24 of that position, they rely on cases that consider who  
25 should be deemed an enemy combatant or a nonprivileged

1 belligerent.

2           They also contend that only someone who is  
3 deemed a member of al-Shabaab as opposed to a mere  
4 supporter or financier or facilitator should be  
5 considered a person with sufficient association with  
6 al-Shabaab to be deemed part of that organization. In  
7 support of that position, they point, in part, to the  
8 matrix of designations used by the United Nations as  
9 referenced in expert testimony presented by the  
10 government which distinguishes between a member of a  
11 foreign terrorist organization and a supporter,  
12 financier, or facilitator; although, all of those  
13 persons in all of those categories may be subject to  
14 sanctions under the U.N. framework.

15           Implicit in the defendants' analysis is the  
16 notion that while a foreign terrorist organization is  
17 not comparable to a formally organized corporation or  
18 other legal or lawful entity, it does have an  
19 identifiable structure with identifiable leaders and  
20 persons who act under the command and control of that  
21 leadership.

22           The defendants also contend that any working  
23 definition of who constitutes a part of a foreign  
24 terrorist organization must accommodate the First  
25 Amendment rights of advocacy and association, including

1 First Amendment protections that extend to the  
2 expressive conduct embedded in financial donations as  
3 recognized in such cases as *Buckley v. Valeo*. For that  
4 reason, a central element of the conspiracy claim,  
5 according to the defendants, is a nonspeech protected  
6 overt act in furtherance of the conspiracy.

7           The government proposes a much less formal  
8 showing that requires only that a particular person is  
9 acting on behalf of a foreign terrorist organization, a  
10 fact-intensive inquiry based on the assessment of all  
11 the evidence.

12           Although the material support statute does  
13 not specifically define or address who is part of a  
14 foreign terrorist organization, it does have other  
15 terms that are either defined or have been construed in  
16 a way that are useful in determining whether someone is  
17 sufficiently acting for or on behalf of a foreign  
18 terrorist organization to be a part of that  
19 organization.

20           For example, Section 2339B(h) explains that  
21 providing prohibited personnel involves providing  
22 someone, which may include himself or herself, who,  
23 quote, works under the terrorist organization's  
24 direction or control or organizes, manages, supervises,  
25 or otherwise directs the operation of that

1 organization.

2           That subsection further provides that  
3 individuals who act entirely independently of the  
4 foreign terrorist organization to advance its goals or  
5 objectives shall not be considered to be working under  
6 the foreign terrorist organization's direction or  
7 control.

8           Clearly, Congress wanted courts to consider  
9 the specific nature of an individual's actions in  
10 relation to the goals and objectives of a terrorist  
11 organization in determining whether someone is to be  
12 deemed part of that organization and intended this  
13 definition not to include those engaged in merely  
14 independent advocacy or only isolated, marginal, or  
15 tangentially related activities relative to that  
16 organization.

17           But the emphasis on complete independence and  
18 the inclusion of activities beyond those occurring  
19 through the direction and control to those that involve  
20 organizing, managing, or supervising various aspects of  
21 a foreign terrorist organization makes clear that  
22 Congress also did not intend to limit the universe of  
23 persons who are deemed sufficiently associated with a  
24 foreign terrorist organization to those who are part of  
25 some identifiable command-and-control structure but

1 rather intended to include all persons who are acting  
2 on behalf of a foreign terrorist organization to  
3 further its goals and objectives.

4           Also helpful in this regard are the court's  
5 pronouncements in *Holder v. Humanitarian Law Project*  
6 where the court cited with approval a dictionary  
7 definition of prohibited service as an act done for the  
8 benefit or at the command of another emphasizing that  
9 the statute requires that the service or other  
10 prohibited support be to a foreign terrorist  
11 organization. Therefore, it requires a connection  
12 between the services provided and that group.

13           In light of these considerations, the Court  
14 concludes that for the purposes of Section 2339B, a  
15 person is to be deemed a part of a foreign terrorist  
16 organization whenever that person has engaged in  
17 substantial activities on behalf of the foreign  
18 terrorist organization, determination to be made on the  
19 basis of all of the facts and circumstances pertaining  
20 to an individual's relationship with a foreign  
21 terrorist organization.

22           And to determine whether and to what extent a  
23 particular individual involved in providing or  
24 receiving funds for use by a foreign terrorist  
25 organization constitutes a part of that organization,

1 the Court has considered the following nonexclusive  
2 list of relevant factors:

3 First, whether the individual, in fact,  
4 provided financial, logistic, or other forms of support  
5 to the foreign terrorist organization or advanced the  
6 foreign terrorist organizations' purposes in any form  
7 and for what period of time;

8 Secondly, whether that person's activities  
9 are specifically and exclusively for in this case  
10 al-Shabaab or whether the individual undertakes similar  
11 activities for other organizations for the public at  
12 large;

13 Third, the degree to which the individual's  
14 actions were directed by or coordinated with al-Shabaab  
15 or its representatives;

16 Fourth, the nature and extent of the  
17 individual's contacts with al-Shabaab or with others  
18 acting on behalf of al-Shabaab, including access to  
19 al-Shabaab's leadership and access to nonpublic  
20 information pertaining to al-Shabaab's activities;

21 Further, whether the individual  
22 self-identifies with al-Shabaab or represents himself  
23 or herself as being part of al-Shabaab or purports to  
24 act on behalf of al-Shabaab; and

25 Sixth, whether an individual is reliably

1 identified as part of al-Shabaab by recognized  
2 international law enforcement or other organizations.

3           It would be unusual if the evidence  
4 established that all or even most of these factors are  
5 satisfied; although, in some cases, there may be  
6 sufficient evidence in just one of these categories to  
7 establish an adequate link between a person and a  
8 foreign terrorist organization so as to be deemed part  
9 of that organization.

10           Here the evidence establishes that these two  
11 defendants, as well as Fardowsa Mohamed and Abdullahi,  
12 were engaged in substantial activities on behalf of and  
13 in coordination with the al-Shabaab organization itself  
14 over an extended period of time.

15           Mohamed operated two safe houses, one for  
16 injured al-Shabaab soldiers and one that facilitated  
17 al-Shabaab military operations. She was not someone  
18 operating an independent organization, like Doctors  
19 Without Borders or the international Red Cross, which  
20 has purposes, goals, and objectives that are not tied  
21 to any one particular beneficiary of its assistance,  
22 but rather solicits donations for humanitarian services  
23 generally.

24           Here the funds Mohamed solicited and received  
25 were specifically for al-Shabaab and for no one else,



1 and the evidence is quite clear that she was  
2 operationally integrated into the al-Shabaab  
3 organization and coordinated her own strategy in  
4 relation to the broader organization's goals over a  
5 period of years.

6           Likewise, Abdullahi obtained funds for the  
7 use of al-Shabaab and solicited those funds for that  
8 purpose and for no other.

9           Both Mohamed and Abdullahi had access to  
10 al-Shabaab leadership and coordinated their own  
11 activities with the specific needs of al-Shabaab,  
12 whether it be in the purchase of an X-ray machine, the  
13 payment of rent on safe houses, the purchase of trucks,  
14 or the payment for al-Shabaab's other specific needs as  
15 events unfolded as a result of al-Shabaab military  
16 operations.

17           For these reasons, these two individuals  
18 undertook substantial activities on behalf of  
19 al-Shabaab so as to be appropriately considered parts  
20 of al-Shabaab for the purposes of the material support  
21 statute.

22           The evidence also establishes that the role  
23 played by Mohamed and Abdullahi and their respective  
24 associations with al-Shabaab were well-known to these  
25 two defendants. For that reason, these defendants

1 understood, intended, and planned that when they agreed  
2 to provide money to these individuals or to those  
3 associated with either the Nairobi or Hargeysa side,  
4 they were providing money to al-Shabaab as a foreign  
5 terrorist organization and were doing so knowingly and  
6 intentionally.

7           The Court also concludes that these two  
8 defendants, Defendant Jama and Defendant Dhirane,  
9 themselves played a central coordinating, facilitating,  
10 and supervisory role with respect to the group of 15  
11 and the ISDAC chat room such that they also were  
12 operationally integrated into al-Shabaab as part of its  
13 fundraising network. They, too, therefore, were  
14 engaged in substantial activities on behalf of  
15 al-Shabaab and also constitute parts of al-Shabaab for  
16 the purposes of the material support statute.

17           Both kept books and records with respect to  
18 al-Shabaab fundraising, were actively involved in  
19 raising and transmitting funds they raised, and  
20 maintained and promoted relationships, not only with  
21 Mohamed, Abdullahi, and others, but also known and  
22 recognized representatives and spokespersons for  
23 al-Shabaab.

24           In short, the group of 15 itself was part and  
25 parcel of al-Shabaab's fundraising network that was

1 integrated organizationally into its structure and was  
2 part of it as a foreign terrorist organization.

3           For all of these reasons, the Court finds  
4 that these two defendants knowingly entered into an  
5 agreement to provide money to al-Shabaab as opposed to  
6 independent persons.

7           The issue, then, is whether that agreement to  
8 provide money to al-Shabaab was an agreement to provide  
9 prohibited material support in support of  
10 Section 2339B.

11           The defendants argue that the moneys provided  
12 were not material support because, first, these funds  
13 were not delivered directly to al-Shabaab but  
14 independent persons and, secondly, the funds were used  
15 for the provision of exempted medicine or other  
16 medical-related care that should be considered within  
17 the scope of the medicine exemption under the  
18 definition of material support or resources.

19           In that regard, the defendants argue that  
20 their use of the term "living expenses" was code for  
21 medicine or medical services and that they intended  
22 only that medical-related services be provided to  
23 al-Shabaab with the funds they provided.

24           The Court has addressed defendants and  
25 disposed of defendants' defense based on the first

1 grounds because the Court has determined that those to  
2 whom the defendants sent the money and who did, in  
3 fact, receive it were part of al-Shabaab. The  
4 defendants themselves concede that the provision of  
5 money directly to a foreign terrorist organization is,  
6 in fact, a crime under the material support statute  
7 regardless of what the money is ultimately used for.

8           Here the defendants did not provide medicine  
9 or medical-related services but rather unrestricted  
10 money which is expressly identified as a type of  
11 material support by the statute.

12           It is, therefore, not necessary for the Court  
13 to rule on whether the medicine exemption should be  
14 construed broadly to include not only medicine itself  
15 but also medical-related services that may have been  
16 provided with the funds these defendants raised and  
17 delivered.

18           The Court would observe, however, that there  
19 was no evidence that the assistance purchased with the  
20 money transferred by these defendants or other members  
21 of the group of 15 and actually provided to al-Shabaab  
22 was, in fact, medicinal substances as opposed to  
23 medical-related services or equipment or clearly  
24 prohibited material support such as nonmedical safe  
25 houses and nonmedical-related living expenses and

1 military support.

2           And were it necessary for the Court to rule  
3 on this issue, the Court would adopt the reasoning of  
4 the Second Circuit in *U.S. v. Farhane*, 634 F.3d 127, a  
5 2011 decision, that the medicine exemption is limited  
6 to providing a substance or preparation as opposed to  
7 services within the science or art of medicine.

8           The Court would also find nothing in any  
9 international treaty or other international obligations  
10 of the United States that would require the medicine  
11 exemption to be construed broadly to include medical  
12 care or humanitarian aid generally in the context of  
13 its provision to a foreign terrorist organization.

14           By way of summary, based on all the evidence  
15 and the Court's assessment of the credibility of the  
16 relevant witnesses and the weight to be given any  
17 particular piece of evidence together with the  
18 reasonable inferences drawn from that evidence, the  
19 Court concludes that the United States has proven  
20 beyond a reasonable doubt that the defendants knowingly  
21 and intentionally agreed to provide material support to  
22 al-Shabaab, which it knew was a foreign terrorist  
23 organization, all in violation of Title 18, United  
24 States Code, Section 2339B. The Court, therefore,  
25 finds both defendants guilty of conspiracy as charged

1 in Count 1.

2 In rendering this verdict, the Court has  
3 considered the defendants' position that an overt act  
4 is required to be proven even though it's not  
5 explicitly stated in the statute in light of the First  
6 Amendment issues that would exist were an overt act not  
7 an element of the offense.

8 In the *Holder* case, the Supreme Court made  
9 clear that independent advocacy is protected and cannot  
10 be the basis for a conviction under Section 2339B, but  
11 it also made clear that the statute involves conduct  
12 and there was no First Amendment restriction  
13 considering speech to determine knowledge and intent  
14 with respect to the prohibited conduct.

15 Here the defendants agreed to engage in  
16 prohibited conduct and are not being punished for any  
17 advocacy, but rather for their actions.

18 To the extent that an overt act in  
19 furtherance of the conspiracy is required, the Court  
20 finds that both defendants engaged in wide-ranging  
21 overt acts in furtherance of the conspiracy, including  
22 but not limited to maintenance of books and records  
23 with respect to the prohibited agreement and the  
24 unlawful objective of the conspiracy, as well as the  
25 overall supervision of the group of 15's fundraising

1 efforts and the solicitation and transmission of funds  
2 intended for the benefit of al-Shabaab.

3           With respect to the substantive counts  
4 alleged in Counts 2 through 21, the issue boils down to  
5 whether the government has established beyond a  
6 reasonable doubt that the specifically alleged  
7 transfers to the referenced persons on the dates  
8 alleged constituted payments of money to al-Shabaab by  
9 either of these two defendants.

10           Based on all the evidence, the Court finds  
11 that the government has proven beyond a reasonable  
12 doubt that the alleged transfer in each and every count  
13 was a transfer by or at the direction of Defendant Jama  
14 of unlawful material support to a foreign terrorist  
15 organization. Defendant Jama clearly understood and  
16 intended that the payments to Mohamed as alleged in  
17 Counts 2, 3, 5, 7, 8, 9, 12 through 17, 19, and 20 were  
18 payments to al-Shabaab.

19           Likewise, the government has proven, as  
20 required, that Defendant Jama directed the payment to  
21 Mohamed by her husband Ali Bakri Sheikh, as alleged in  
22 Counts 4, 6, 10, and 11 as payment to al-Shabaab and  
23 that her payments to her father, Osman Jama, as alleged  
24 in Counts 18 and 21 were intended to be, at least in  
25 part, payments to al-Shabaab. The Court, therefore,

1 finds Jama guilty as charged in each of Counts 2  
2 through 21.

3           Based on these convictions, the government  
4 also seeks the conviction of Defendant Dhirane based on  
5 *Pinkerton* liability. That doctrine provides that the  
6 overt acts of one partner in crime is attributable to  
7 all. In other words, the *Pinkerton* doctrine makes a  
8 person liable for substantive offenses committed by a  
9 coconspirator when the commission is reasonably  
10 foreseeable and in furtherance of the conspiracy.  
11 Although each defendant must have some knowledge of the  
12 conspiracy, each individual coconspirator need not be  
13 aware of its full scope in order to be deemed guilty  
14 for the acts of the other members.

15           The Court finds under *Pinkerton* liability  
16 that Defendant Dhirane is guilty of providing material  
17 support in Counts 16 through 21 based on Jama's  
18 convictions on those same counts.

19           The Court finds that Dhirane joined the  
20 conspiracy no later than April 2012 with knowledge of  
21 the scope and nature of the conspiracy, and Defendant  
22 Jama's transfers of funds to al-Shabaab as alleged in  
23 Counts 16 through 21 occurred after her joining the  
24 conspiracy and were reasonably foreseeable within the  
25 scope of the conspiracy that she joined. The Court,



1 therefore, finds her guilty as charged in Counts 16  
2 through 21 and not guilty as to Counts 2 through 15.

3 Let me also deal with Defendant Jama's  
4 Rule 29 motion for judgment of acquittal which remains  
5 outstanding.

6 Defendant Dhirane moved to join that motion  
7 in a memorandum filed in support of that motion, and  
8 the Court grants that motion to join Jama's Rule 29  
9 motion.

10 Those Rule 29 motions are to be decided based  
11 on the evidence as it existed as of the close of the  
12 government's case but based on an assessment of the  
13 evidence in the light most favorable to the government.  
14 Although the Court based its verdict on all the  
15 evidence and its determinations of credibility and  
16 weight and not based on viewing the evidence most  
17 favorably to the government for the reasons and based  
18 on the findings stated in connection with its verdict,  
19 the Court concludes as a matter of law that the  
20 evidence when viewed in the light most favorable to the  
21 government was sufficient at the time the motion was  
22 made to sustain convictions as to Jama on every one of  
23 the counts.

24 For Defendant Dhirane, the Court concludes  
25 that the evidence was sufficient to sustain a

1 conviction as to Count 1 and Counts 16 through 21 but  
2 not as to Counts 2 through 15 as the evidence did not  
3 sufficiently establish that Defendant Dhirane joined  
4 the specific conspiracy alleged in the indictment until  
5 approximately April 2012 even though the evidence would  
6 be sufficient to establish that she was involved in  
7 al-Shabaab-related activities and may have been  
8 participating in a separate illegal conspiracy prior to  
9 that date.

10           So for those reasons, Defendant Jama's  
11 Rule 29 motion is denied, and Defendant Dhirane's  
12 Rule 29 motion is denied as to Counts 1, 16 through 21,  
13 and granted as to Counts 2 through 15.

14           Will the defendants come to the podium,  
15 please.

16           Ms. Jama, in accordance with the Court's  
17 verdict, the Court finds you guilty of Counts 1 through  
18 21 of the superseding indictment.

19           Ms. Dhirane, would you come forward, please.

20           In accordance with the Court's verdict, the  
21 Court finds you guilty of Count 1 and Counts 16 through  
22 21 of the superseding indictment and not guilty of  
23 Counts 2 through 15.

24           Have a seat for a moment.

25           I'm going to set this matter down for

1 sentencing on January 19 at 9:00 a.m.

2 Mr. Gillis, what's the government's position  
3 on release pending sentencing?

4 MR. GILLIS: Your Honor, we ask that they be  
5 remanded to the custody of the U.S. marshals. We  
6 submit that there is not a substantial likelihood that  
7 a Rule 29 post verdict would be granted. Under those  
8 circumstances, the statute requires that they be  
9 remanded because of the nature of the crime.

10 I have a brief memorandum that I can pass up  
11 to the Court if the Court wishes.

12 THE COURT: All right.

13 MR. GILLIS: I'm handing it to Mr. Burns and  
14 to counsel.

15 (Documents are passed up to the Court.)

16 THE COURT: All right. Ms. Minter.

17 MS. MINTER: Your Honor, we would submit that  
18 there are exceptional reasons under 3145(c) to continue  
19 Ms. Jama's release on conditions. As the Court knows,  
20 she was released on conditions originally in August  
21 2014. So it's been over two years, and she's been  
22 compliant with all of those conditions.

23 Those conditions have changed over time. As  
24 the Court knows, they were originally somewhat more  
25 stringent. Ms. Jama was required to be released under

1 the supervision of a third-party custodian. She did  
2 that. She was required to reside with that third-party  
3 custodian. She did that even though it meant moving  
4 her rather large family into that individual's home and  
5 living in a very small home with all of those people  
6 for an extended period of time. She ultimately  
7 requested and the Court granted a request to return to  
8 their own home. But during the time of the initial  
9 conditions, she complied with that requirement.

10 She has also been subject to electronic  
11 monitoring the entire time that she has been on  
12 release. She's been subject to conditions which  
13 restricted her access to the Internet, and she has  
14 complied with all of those things.

15 Your Honor, assuming without agreeing that  
16 the government has proven that these individuals  
17 discussed the nature of these offenses and the possible  
18 sanctions of committing these offenses, as the  
19 government argued in their case in chief that they did,  
20 in short, that they were aware of the violation of this  
21 particular statute and they were aware of the  
22 consequences via other individuals who had been  
23 convicted, then clearly -- again, assuming without  
24 agreeing -- these two defendants have been aware of the  
25 possible consequences all of this time. Nevertheless,

1 they didn't continue to engage in this activity.

2 They've made no effort to flee or avoid prosecution.

3           They have appeared. Ms. Jama has appeared,  
4 and Ms. Dhirane from the other end of the country have  
5 appeared for all required court appearances and  
6 hearings. I can represent with respect to Ms. Jama  
7 that she has been consistently in contact with counsel  
8 and appeared for all necessary meetings and  
9 discussions.

10           So in short, Your Honor, despite the  
11 exceptionally long amount of time that Ms. Jama has  
12 been on conditions, she has nevertheless complied with  
13 all of those very stringent conditions.

14           We would submit in light of those  
15 circumstances that there are exceptional reasons under  
16 3145(c) to continue release.

17           The sentencing is not an extended period of  
18 time, especially in light of the length that the case  
19 has been going on. I would also proffer to the Court,  
20 as I think the Court is aware, that Ms. Jama has  
21 substantial family obligations, and it will require  
22 some time to make arrangements for any potential  
23 incarceration at sentencing.

24           Accordingly, we would submit that all of the  
25 conditions have been complied with up until this point.

1 We would ask the Court to find that there are  
2 exceptional reasons under 3145(c) to grant her  
3 continued release on conditions of release.

4 Certainly, should the Court have concerns,  
5 they could be made more stringent at this point as they  
6 were initially. We would submit that's not necessary  
7 given her exceptional compliance thus far.

8 All right. Mr. Yamamoto or Ms. Deutsch.

9 MR. YAMAMOTO: Your Honor, we would join  
10 Ms. Jama and Ms. Minter in asking the Court to consider  
11 the provisions of 3145(c) and exempt Ms. Dhirane from  
12 mandatory detention, of course, for similar reasons  
13 with respect to Ms. Jama. She's followed all the  
14 requirements of supervised release -- not supervised  
15 release, pretrial release.

16 For the two-and-a-half years this case has  
17 been going on, there have been no problems with  
18 pretrial. She's done everything they've asked. She's  
19 come to the hearings when asked by the Court. The  
20 Court has made arrangements for her travel, and she's  
21 made those arrangements at all times.

22 She knew the sanctions and knew that she was  
23 facing what she said was 15 years in some of the  
24 conversations. Yet, she's been here. She's followed  
25 all directions.

1           For two-and-a-half years, we've been on Skype  
2 almost weekly for three and four hours at a time.  
3 She's been to all of these meetings at the federal  
4 public defender's office in Seattle. We've sat down  
5 and talked and discussed things.

6           She's got family she needs to take care of.  
7 She's got six kids that she needs to make arrangements  
8 for or else we dump all this on her husband, who's  
9 sitting in the back of the courtroom. He's really not  
10 prepared to try to handle that.

11           Most importantly, the Court has not faced --  
12 courts as a whole have not faced this particular issue  
13 and these particular fact situations before. As the  
14 Court indicated, it's looked at cases. I looked at  
15 something like 490 cases involving material support and  
16 2339, and I found absolutely nothing -- which probably  
17 was something I should have raised but didn't. But  
18 there was nothing in any of the case law similar to  
19 this situation, similar to these ladies, and there's  
20 really -- though I thought the Court's decision and  
21 ruling was excellent -- it was terrific -- there's no  
22 guarantee that the Fourth Circuit or the Supreme Court  
23 will see the case in a similar light as the Court has.

24           So it's not like this is a slam bang dunk for  
25 the government. There's still issues that can be

1 raised and will be raised in the Fourth Circuit, and if  
2 the Fourth Circuit rules against us, in the Supreme  
3 Court. We'll see whether or not the Court of Appeals  
4 or the Supreme Court supports the rulings of this  
5 Court. But, again, there's no case law at this point.  
6 So I think that's an appropriate reason to have these  
7 ladies continue on supervised release.

8           If the Court wishes them to be on home  
9 detention as opposed to the release they're on now,  
10 then we support that, whatever is necessary.

11           If they did what the government alleges, they  
12 sent small amounts of money, \$50, \$100 here and there.  
13 They were asked to raise -- asked for hundreds and  
14 hundreds of dollars, and they laughed because there was  
15 no way they could raise those amounts of money. So  
16 we're talking about a bunch of ladies who sit at home,  
17 gossip all day long on the phone for hours about  
18 everything under the sun. You get these snippets of  
19 conversations about al-Shabaab mixed in with  
20 everything. They do these things. They send pin money  
21 actually, \$50 here, \$100 a month we're talking about,  
22 not a day or a week. So that's a sufficient reason or  
23 sufficient exceptional reason to add to those that I've  
24 mentioned.

25           There are no guns or personnel involved.



1 This happened several years ago. This is three years  
2 down the line from their activity. They have not done  
3 anything since that time, since their arrest. So  
4 there's no reason to believe that they're a danger to  
5 society. There's no reason to believe they're a flight  
6 risk. There's no reason to not release them.

7 Thank you, Your Honor.

8 THE COURT: Mr. Gillis, anything you want to  
9 say further?

10 MR. GILLIS: Your Honor, all of those  
11 arguments go to the question of flight risk or danger  
12 to the community and are irrelevant unless the Court  
13 first finds that there is a substantial likelihood that  
14 a motion for acquittal or new trial will be granted.

15 Thus the question of what might or might not  
16 be done on appeal is a question not for this Court but  
17 perhaps for the Fourth Circuit or the Supreme Court, if  
18 the case gets that far, whether under the appropriate  
19 statutes governing release pending appeal, those courts  
20 might reach those decisions.

21 Based upon the Court's detailed findings of  
22 fact and its observation that the evidence was  
23 overwhelming, we submit that there could not be a  
24 substantial likelihood that a motion for acquittal or a  
25 new trial would be granted. The only one that could be

1 made would be a posttrial Rule 29, and I doubt that  
2 there are any other factual or legal arguments that  
3 could be raised at this point that would result in any  
4 kind of ruling other than the one that the Court has  
5 already reached.

6           Also, up until this point, these defendants  
7 have been presumed innocent as certainly they should  
8 have been. At this point, they are now convicted of  
9 providing material support to a violent organization,  
10 such as al-Shabaab.

11           Congress made the decision that when  
12 convicted of certain crimes, the defendants must be  
13 remanded immediately after sentencing. I submit, Your  
14 Honor, that these arguments just are irrelevant given  
15 Congress' decision that these statutes require  
16 detention.

17           But I also would submit, Your Honor, that  
18 even if the question of danger to the community or risk  
19 of flight were a consideration, the Court heard the way  
20 in which these defendants rejoiced at the slaughter of  
21 innocent civilians, women and children running from the  
22 Westgate Mall, and rejoiced at the slaughter at the  
23 Boston marathon, laughed at the mayhem that al-Shabaab  
24 caused. They couldn't have been more joyous as the  
25 Court heard from their recorded conversations and

1 certainly read *ad nauseam* in the transcript.

2           So I submit, Your Honor, that even if the  
3 Court were to reach the second condition after -- if it  
4 were to first make the finding of a substantial  
5 likelihood of a Rule 29 being granted, that now having  
6 been convicted of supporting al-Shabaab, of being -- as  
7 I understand the Court's ruling, of being closely  
8 associated with members of al-Shabaab, with having  
9 inside information from leaders of al-Shabaab, and  
10 having laughed at violence by al-Shabaab here at home  
11 in the United States, I submit for all of those reasons  
12 that they do submit a danger to the community, as well  
13 as a risk of flight.

14           But finally, as I've said already, that  
15 condition we submit is not relevant unless the Court  
16 first finds that there is a substantial likelihood that  
17 a Rule 29 would be granted.

18           THE COURT: Whether the defendants should be  
19 continued on release pending sentencing is governed by  
20 18 U.S.C. Section 3143 through which Congress mandated  
21 that defendants who are convicted of certain crimes,  
22 including the crimes for which these defendants have  
23 now been found guilty, must be detained pending  
24 sentencing absent certain specific circumstances as set  
25 forth in either that statute or for exceptional reasons

1 as set forth in 3145.

2           It's clear in the Court's judgment that none  
3 of the subsections of 3143(2) would apply such that  
4 release would be authorized. The issue really comes  
5 down to whether there are exceptional circumstances  
6 under 3145. The Court has construed that provision as  
7 applying as a further exception to 3143; although, that  
8 also is an open issue. The Court is also familiar with  
9 the appellate standards for what constitutes  
10 exceptional circumstances. The Court's own view has  
11 been that one exceptional circumstance is when the  
12 government joins in the request or does not object to  
13 release, the Court would consider that an exceptional  
14 circumstance. We don't have that here.

15           So the issue is whether that provision, as  
16 construed by the Fourth Circuit, would allow release in  
17 this case. I don't take issue with anything that  
18 Ms. Minter said or with the observations of  
19 Mr. Yamamoto concerning these particular defendants and  
20 their own particular circumstances. The simple fact is  
21 that there's nothing here that would qualify as an  
22 exceptional circumstance, and the Court is mandated  
23 under Section 3143 to order detention at this time.

24           The defendants will come to the podium.

25           Ms. Minter.

1 MS. MINTER: Your Honor, if the Court is  
2 inclined to remand the defendants, I would ask that  
3 Ms. Jama be allowed to self-surrender at some point in  
4 the near future to allow her to make arrangements with  
5 her family. Given the long period of time that she has  
6 been on supervision, I think that a brief extension of  
7 a week would be appropriate in this case.

8 THE COURT: All right. Any objection to  
9 that, Mr. Gillis?

10 MR. GILLIS: Yes, Your Honor. I don't  
11 believe the statute permits it.

12 THE COURT: All right. The Court is going to  
13 order detention at this time for both defendants.

14 Would the defendants come to the podium,  
15 please.

16 Ms. Jama and Ms. Dhirane, the Court has set  
17 this matter down for sentencing on January 19 at  
18 9:00 a.m. in this courtroom.

19 Between now and then, you will have the  
20 opportunity to be interviewed by Pretrial Services and  
21 Probation. That's an opportunity for you to provide to  
22 that office and through that office this Court any  
23 information you think would be helpful to the Court in  
24 assessing what an appropriate sentence is. You may be  
25 accompanied by your lawyers during that interview.

